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ARIZONA ATTORNEY GENERAL

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March 17, 1967

DEPARTMENT OF LAW LETTER OPINION NO. 67-14-L (R-57)

REQUESTED BY: L. WALDO DeWITT, Chairman
State Tax Commission of Arizona

QUESTION: What is the meaning of the term "producing mine"
as that term is used in A.R.S. Section 42-126?

ANSWER: See body of opinion.

Applicable statute:

"§ 42-126. Assessment of producing mines; forward-
ing assessed valuation to board of supervisors

"The commission shall appraise and assess all patented and unpatented producing mines within the state and on or before the second Monday of July transmit to the several boards of supervisors the assessed valuation thereof."

In order to define the term "producing mine," it is first necessary to define the term "mine." In his handbook on American mining law, George P. Costigan, Jr., points out that the word "mine" has many meanings. Most of the time, the word "mine" is used to mean one of the following:

1. Any excavation made for minerals.
2. Underground workings.
3. A vein or deposit.
4. A mining claim.
5. A patented as distinguished from an unpatented location.
6. A paying location as distinguished from one not yet paying which may be known as a prospect.

The word "mine" originally referred to underground workings. In the United States placer mine workings on the surface are called "mines." The trend has been to enlarge the meaning of words such as "mines" and "minerals," until today they are used in a very broad sense.

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Various authorities have defined "mine" as "any excavation made for mineral." Mining Rights on the Public Domain, by Arthur R. Morrison, page 775; Handbook on American Mining Law, by George P. Costigan, Jr.; Mining Law, by Theodore Martin; and Examination and Valuation of Mineral Property, by Roland D. Parks, page 1. It is the opinion of the Attorney General that the Legislature intended to use this primary, broad and modern meaning of the word "mine" when it enacted A.R.S. § 42-126. A.R.S. § 1-213 provides that words and phrases shall be construed according to the common and approved use of the language. If a secondary meaning of the word "mine" had been intended, then the Legislature would have provided a statutory definition for the word "mine."

In order to understand this definition of "mine," it is necessary to define the word "mineral." In American Mining Law, by A. H. Ricketts, Vol. 1, page 24, "mineral" is defined in its commercial sense as "any substance found in nature having sufficient values separate from its situs as a part of the earth to be mined, quarried, or dug for its own sake or its own specific use." The word "mineral" is defined in Mining Rights on the Public Domain, by Arthur R. Morrison, page 702, as: "Any inorganic product of the earth of greater value than the soil itself." The word "mineral" is used in the definition of "mine" quoted above in accordance with Ricketts' definition.

For tax purposes the main distinction between producing mines and other mines is that producing mines are assessed by the Tax Commission and are valued by the Hoskold formula whereas other mines are assessed by county assessors and generally valued by the same methods applicable to the assessment of property in general for the purposes of the property tax. The Hoskold formula is essentially an income capitalization method of valuation; therefore, it can only be applied to a property which is involved in some economic activity. The word "produce" means "to yield or furnish" according to Webster's International Dictionary, Third Edition.

Accordingly, a "producing mine" would be one from which any mineral was being removed for use or sale. Where the excavation is for the purpose of reaching ore for mining and ore is not being

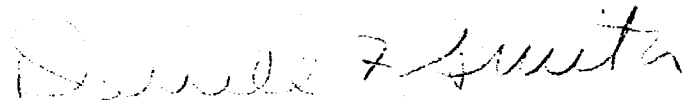
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removed for production, the mine has not yet reached a producing mine status. Guanacevi Mining Co. v. Commissioner of Internal Revenue, CCA 9th, 127 F.2d 49, 51. This definition of producing mines is in accordance with the common usage of the language of A.R.S. § 42-126, the method of valuing mines and the system of taxing mines that we have had in Arizona for a long time and it is the opinion of the Attorney General that this is the proper definition of the term "producing mine" for the purposes of A.R.S. § 42-126.

Respectfully submitted,



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The Attorney General

DFS:cah